

REMARKS

By this Response, Claim 1 has been amended. Hence, Claims 1-34 are pending in this application. Updated Formal Drawings also accompany this Response. Neither the amendments to the claims nor the updated Formal Drawings add any new matter to this application. Furthermore, the amendments to the claims were made to improve the readability and clarity of the claims, and not for any reason related to patentability. All issues raised in the Office Action mailed July 19, 2007 and the Interview Summary mailed September 11, 2007 are addressed hereinafter.

The Examiner and the SPE Jason Carbone are thanked for their cooperation in the Telephone Interview of September 5, 2007.

As discussed in that Interview, Applicant hereby re-asserts all earlier arguments regarding prior art, as it is Applicant's position that the assertions within the Final Office Action do not overcome these arguments. To that end, within the Office Action mailed July 19, 2007, the "Response to Arguments" section begins on page 26 and is divided into four parts, A (Claims 1 and 26; Baskey), B (Claims 8, 11, and 24; HP), C (Claims 1 and 26; Mittal), and D (Claims 1 and 26; Mittal). Each of these sections are addressed below, but some preliminary remarks are in order.

The first preliminary remark is that the Office Action repeatedly utilizes the doctrine of "well-known" within the various rejections shown in parts A, B, C, and D. However, all of these rejections are under 35 USC § 102, yet the doctrine of "well-known" is only applicable for rejections made under 35 USC § 103. And even if these rejections were changed from § 102 to § 103, Applicant would still request a reference supporting the assertion of well-known as is Applicant's right under MPEP 2143.03.

Another preliminary issue is the use of the doctrine of inherency. Under MPEP 2112 IV, the Examiner must provide rationale or evidence tending to show inherency. In part D below,

the Office Action asserts inherency, but provides no rationale or evidence to support this assertion.

Part A (Claims 1 and 26) of the Response to Arguments states that “Baskey teaches a cluster of routers, and at the time of the invention, it was well known in the art that a router can perform the functions of a switch”. Applicant respectfully disagrees. First, this language does not meet the requirements for a rejection under 35 U.S.C. § 102. Anticipation under 35 U.S.C. § 102 is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. Second, Applicant is not claiming a router “perform[ing] the functions of a switch”. Third, as a matter of right under MPEP 2143.03, Applicant requests production of a reference supporting this (allegedly) “well known” position.

As stated in the earlier Reply and also in the Telephone Interview, Applicant is claiming, *inter alia*, a cluster comprising a first switch device, a plurality of active routers, one or more standby routers, and a second switch device. For at least the above reasons, the rejection of claims 1 and 26 is defective and should be withdrawn.

Part B (Claims 8, 11, and 24; HP) of the Response to Arguments states that “HP teaches network nodes, a network node is defined as any of computer systems, routers, switches, and hubs, as known by one well skilled in the art at the time of invention. HP teaches these network nodes as being defined within the topology maps. The submaps as shown in HP allow viewing and commands to be run on the network nodes within the submaps as detailed.”

Again, Applicant respectfully disagrees. First, the above language regarding definition of network nodes is speculative, not supported within the HP reference for reasons stated earlier, and potentially inaccurate. Applicant believes the Office Action is applying the “well-known” doctrine although they used the words “well-skilled”. Applicant again requests production of a reference supporting this (allegedly) “well skilled” assertion as a matter of right under MPEP

2143.03. Second, this language also does not meet the requirements for a rejection under 35 U.S.C. § 102.

The Office Action did however correctly note that Applicant accidentally referenced Claim 26 when Applicant clearly meant Claim 24 (page 27, first paragraph). The Office Action is correct, and Applicant regrets the error.

Part C (Claims 1 and 26; Mittal) of the Response to Arguments states that “Mittal teaches a cluster of routers, and at the time of the invention, it was well known in the art that a router can perform the functions of a switch.”

Again, Applicant respectfully disagrees. First, Applicant is not claiming a router “perform[ing] the functions of a switch”. Second, this assertion does not meet the requirements for a rejection under 35 U.S.C. § 102. Third, Applicant requests production of a reference supporting this (allegedly) “well known” position.

Part D (Claims 1 and 26; Mittal) of the Response to Arguments states that “Mittal teaches a cluster of routers, and at the time of the invention, it was well known in the art that a router can perform the functions of a switch. Additionally, it is inherent that a router that is not used within the cluster is in standby for a router that is ‘active’. Each active router can be standby for each of the other active routers, making it inactive for the workload of the active router it would replace should that active router fail.”

Applicant respectfully disagrees. First, Applicant contests the above assertion of inherency, and requests rationale or evidence as is Applicant’s right under MPEP 2112. Second, this language does not meet the requirements for a rejection under 35 U.S.C. § 102. Third, Applicant requests production of a reference supporting this (allegedly) “well known” position.

For at least the above reasons, the rejections of Claim 1, 8, 11, 24, 26, and 33, as well as all claims dependent therefrom, continue to be invalid and should be withdrawn.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that all of the pending claims are now in condition for allowance. The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

If any applicable fee is missing or insufficient, the Director is hereby authorized to charge any applicable fee to our Deposit Account No. 50-1302.

Respectfully submitted,

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